



Ginger
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

March 19, 1982

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ARIZONA ATTORNEY GENERAL

Mr. Michael G. Prost
Deputy Coconino County Attorney
Coconino County Courthouse
Flagstaff, Arizona 86001

Re: 182-040 (R82-021)

Dear Mr. Prost:

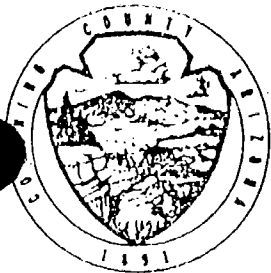
We have reviewed your opinion letter dated February 16, 1982, to the Superintendent of the Fredonia Moccasin Unified School District and concur with your opinion that the Arizona State Fire Code applies retroactively to a school building which was constructed prior to adoption of the Code and which constitutes an immediate and apparent hazard to life or property because it has no sprinkler or fire alarm system or fire protective doors between the basement and upper floor of the building. A.R.S. § 26-338.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC/CWL/lm



OFFICE OF

County Attorney EDUCATION OPINION

COCONINO COUNTY
COCONINO COUNTY COURTHOUSE
FLAGSTAFF, ARIZONA 86001
719-6518

ISSUE NO LATER THAN

4-25-82

JOHN VERKAMP
COUNTY ATTORNEY

February 16, 1982

2-25-82 pc
LOWE

R82- 021

Elwood E. Wilson, Superintendent
Fredonia Moccasin Unified School District No. 6
P. O. Box 247
Fredonia, Arizona 86022

Re: Applicability of State Fire Code to School
Buildings

Dear Mr. Wilson:

You have requested our opinion as to the applicability of the Arizona State Fire Code to the elementary and high school buildings presently operated by the Fredonia-Moccasin Unified School District No. 6. Your inquiry was prompted by an inspection of those buildings performed by the State Fire Marshal's Office on May 21, 1981. By letter from the Industrial Commission dated June 11, 1981, the school district was officially notified of some 22 separate violations existing in the Fredonia Elementary School building and some 12 separate violations in the Fredonia High School building. Your specific question is whether the fire code regulations set forth in Items 2, 3, 4, 11 and 19 of the Industrial Commission's letter lawfully apply to the elementary school in view of the fact that the school was built many years previous to the adoption of the fire code itself. Your second question is whether Items 3, 6 and 12 were part of the fire code at the time that the high school was built in 1974. In the event that the answer to the latter question is yes, your third question is whether the district has any legal recourse against the builder.

In our opinion, your first and second questions must be answered in the affirmative. The cited provisions of the fire code lawfully apply to the Fredonia Elementary School building and to the Fredonia High School building. It is imperative that the school district take whatever steps are necessary to bring these buildings into compliance with the fire code within a reasonable period of time, or the fire marshal could order that the school buildings be closed.

First of all, I should point out that this general area was discussed by the Attorney General in Opinion No. 179-284, dated November 20, 1979. I have enclosed a copy of this Opinion for your review. In that opinion Mr. Corbin concluded as follows:

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...the educational institutions, including the Arizona Board of Regents, the State Board of Education and the governing institutions of all common schools, unified schools, high schools and junior colleges, are subject to the provisions of the State Fire Code. Finally, we find that it is the duty of the fire marshal to conduct periodic inspections of buildings and premises maintained by such educational institutions to inspect for violations of the State Fire Code.

Based upon the foregoing opinion of the Attorney General and the governing statutes, A.R.S. §§26-331 et seq., it is clear that the inspection of the elementary and high school buildings in Fredonia on May 21, 1981, was entirely appropriate under Arizona law and furthermore that the state fire marshal does have the duty to enforce the various provisions of the fire code as they may apply to those two buildings.

The first question you have raised goes somewhat further than the general discussion by the Attorney General in his opinion. Your question goes to the retroactive application of the State Fire Code to school buildings that were constructed prior to the adoption of the fire code. A.R.S. §26-338 addresses the question of retroactivity as follows:

§26-338. Retroactivity

This article shall be construed, and the rules and regulations promulgated under this article designed, as to make reasonable allowance to continue in service those facilities in service prior to the effective date of this article and rules and regulations promulgated under this article, which are not in strict conformity with those provisions and which do not constitute an immediate and apparent hazard to life or property. If any structure is permitted to continue in service under authority of this section or any rule or regulation adopted under this section, no liability may accrue to this state, any political subdivision of this state or any public officer or employee by reason of his permitting the continuation in service of any facility pursuant to this section. Notwithstanding this section, any buildings, structures or appurtenances to the

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building or structures, subject to this article, built after August 13, 1972 shall conform to the fire prevention standards, rules and regulations promulgated by the division [of Emergency Services]. (emphasis added)

It appears to us that the absence of a sprinkler and fire alarm system in the Fredonia Elementary School and the absence of fire protective doors between the basement and upper floor of that building (Items 2, 4, 11 and 19) could easily come within the legal definition of violations which pose "an immediate and apparent hazard to life or property" under A.R.S. §26-338. In any event, the State erased any remaining doubt on that question when it adopted Chapter 11 of the Life Safety Code, which expressly applies to school buildings constructed and in use prior to the adoption of the fire code. The Fredonia Elementary School building falls into this category. Sections 11-1.1.2, 11-2.11.5 and 11-3.4.1 of the Life Safety Code authorize the fire marshal to order the installation of sprinkler and fire alarm systems in existing school buildings. (The elementary school was incorrectly cited under Section 10-2.11.5 of the Life Safety Code.) I have enclosed copies of the life safety and fire code regulations cited by the fire marshal for your review.

In view of the fact that the high school was constructed after August 13, 1972, it is our opinion that the State Fire Marshal was well within his statutory authority when he cited the high school for items 3, 6 and 12, which require the installation of a sprinkler and fire alarm system.

The State Fire Marshal may enforce the above requirements by means of a cease and desist order or by injunctive relief in the Superior Court, pursuant to A.R.S. §26-339. In addition, the board members could face civil fines up to \$300 per day for non-compliance. I have discussed this matter with the Deputy State Fire Marshal, Mr. Robert L. Reid, and he is well aware of the funding problems that the District faces under present law. He appears to be quite flexible in regard to establishing a timetable for correcting the various violations cited in his letter of June 11, 1981. Therefore, I would urge you to contact Mr. James Buzzard, who is the Deputy State Fire Marshal for Coconino County, at 779-6692 as soon as possible. If you wish, I would be happy to attend any meeting with you and Mr. Buzzard in order to assist in this problem. In addition, I recommend

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that the District consider retaining the services of a competent architect or engineer in order to devise a plan for implementing the improvements set forth in Mr. Reid's letter.

Finally, you have asked whether the District has any recourse against the contractor who built the high school on account of the several fire code violations cited by the Fire marshal. We need to have more information from you in order to answer this question. Even if litigation were advisable, I do not feel that it could be resolved in time to obtain the funds required to correct the violations cited by the fire marshal.

It is my understanding from our several conversations that your primary concern is how the District can pay for the expensive sprinkler and fire alarm system required in the elementary and high school buildings. It is our opinion that these improvements would be appropriate expenditures from the District's capital levy funds, provided that sufficient funds are available in the special levy account. The District would have to amend its capital levy plan, and a public hearing is required by A.R.S. §15-902 before doing so. This would be the simplest solution.

As an alternative, the District could hold a budget override election to exceed its capital outlay revenue limit, pursuant to A.R.S. §15-481(H). This election must be held on the third Tuesday in May or the second Tuesday in February. Title 15 does not limit the amount of a capital outlay budget override. However, the District must prepare alternative budgets and meet various deadlines for an override election. We recommend that you explore this and other financing alternatives with the County School Superintendent, Mrs. Betty Jo Anderson, as soon as possible.

Now that the school district is on official notice that the elementary and high school buildings are in substantial violation of the State Fire Code, any loss of life or injury that might occur in the future as a result of a fire at the elementary or high schools could result in substantial liability to the District. This is a very serious situation, and the District should deal with it on a priority basis.

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Pursuant to A.R.S. §15-253(B), I am forwarding this opinion to the Attorney General for his review. Please call me if you have any questions or further concerns about this matter.

Very truly yours,

JOHN VERKAMP
Coconino County Attorney

By Michael G. Prost
Michael G. Prost
Deputy County Attorney

MGP:wf

Enclosures

cc: Honorable Robert K. Corbin, Attorney General
Betty Jo Anderson, County School Supt.
B. Paul Saunders, State Fire Marshal